



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,919	08/06/2003	Claudius Zeiler	A8130.0659/P659	8849
24998 7590 12/22/2010 DICKSTEIN SHAPIRO LLP 1825 EYE STREET NW Washington, DC 20006-5403				
EXAMINER NELSON, CHRISTINE L.				
ART UNIT		PAPER NUMBER		
3775				
MAIL DATE		DELIVERY MODE		
12/22/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/635,919

Applicant(s)

ZEILER ET AL.

Examiner

CHRISTINE L. NELSON

Art Unit

3775

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-19, 21, 22 and 29-33 is/are pending in the application.
- 4a) Of the above claim(s) 17-19, 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 23, 2010 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29 – 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esser (US Patent Number 6,096,040) in view of Bailey (US Patent Number 5,607,430) in further view of Mennen (US 4,364,382).

Regarding Claim 29, Esser discloses a plate member having an edge defining a head-end portion shaped to bear against a surface of a bone and a shaft-end portion shaped to bear against a surface of a bone (Figures 3-5 and column 5, lines 52-64), that has opposite side edges, the shaft-end portion being narrower along a lateral direction

than the head-end portion (Figure 3), and the plate member edge delineating a bone facing surface to bear against the bone and an opposing side surface facing away from the bone (Figures 3-5). Esser further discloses a plurality of holes for bone screws on each of the head-end portion and the shaft-end portion for fixing the plate member to the bone surfaces (Figure 2 and column 5, lines 32-36).

Esser does not disclose discrete receiving members protruding from the opposing side surface, located at the head-end portion, and proximate to the edge, each member defining a substantially circular and circumferentially enclosed aperture through which flexible members may be passed through and tightened after the plate member has been secured to the bone surfaces, an edge circumference of each aperture having a distal curved section spaced further from the opposing side surface than a proximal curve section. However, Bailey does teach at least one discrete receiving member protruding from the opposing side surface (Figure 1, 18 "bosses"), located at the head-end portion, and proximate to the edge, each member defining a substantially circular and circumferentially enclosed aperture (embodiment in Figure 7) through which flexible members may be passed through and tightened after the plate member has been secured to the bone surfaces (Column 4, lines 6-23), an edge circumference of each aperture having a distal curved section spaced further from the opposing side surface than a proximal curve section (Figure 3, 22 "openings").

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the "bosses" for holding a cable in place to further secure a bone plate as disclosed in Bailey with the shape and configuration of the bone

plate for use with long bones as disclosed in Esser. The adaption of bosses to hold cabling and further secure a bone plate is applicable to any bone plate where additional fixation support would be beneficial.

Esser in view of Bailey does not disclose receiving members proximate to at least each side edge section. However, Mennen teaches receiving members proximate to each side edge section of a bone plate (see Figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the multiplicity of edge receiving members as taught by Mennen with the apertures for attachment as taught by Bailey as placing the receiving members on the edges would provide for more firm attachment.

Regarding Claims 30 and 33, Esser discloses an implant plate with a thickness of the plate member between 0.8 and 3.5 mm with a substantially uniform thickness between 0.5 and 6.5mm (Column 6, lines 4-6).

Regarding Claim 31, Esser discloses an implant plate where the plate member is of titanium alloy (Column 6, lines 12-13).

Regarding Claim 32, Esser discloses an implant plate where the plate member has a slight curvature to the head-end portion and the shaft-end portion to bear against the outer surfaces of the bone (Column 5, lines 52-64).

Response to Arguments

Applicant's arguments with respect to claims 29-33 have been considered but are moot in view of the new ground(s) of rejection.

However, regarding applicant's arguments that Esser does not teach the claimed "head-end portion," regardless of the naming of the wider end of the bone plate of Esser, the enlarged section would be used on the enlarged portion (wider end) of a bone. Regarding the statement that Esser does not have a head end portion with opposite, similar, edge sections, the examiner respectfully disagrees. Although the applicant argues that the edges of Esser are unsymmetrical, they are indeed *similar* in that they are curved and rounded and diverge from the midline shaft of the plate. The applicant does not claim the edges to be symmetrical.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINE L. NELSON whose telephone number is (571)270-5368. The examiner can normally be reached on Monday through Friday 7:30 to 5:00 - first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Barrett can be reached on (571)272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTINE L. NELSON/
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775